

Littlefield v. Pillsbury Co.: A Turn to the Left in Workers' Compensation

I. INTRODUCTION

A body of statutory law known as workers' compensation arose with the industrial growth of the United States in the early part of the twentieth century. As the law of negligence between master and servant proved grossly inadequate to recompense the many injuries and deaths occurring in the rapidly expanding industrial society, legislatures across the nation responded with workers' compensation acts designed to compensate for work-related injuries.¹ The workers' compensation system holds employers liable for employees' work-related injuries regardless of the degree of employer or employee fault. Victims of work-related injuries receive financial and medical benefits and avoid becoming wards of the state. Employers add the cost of the compensation plan to the total cost of their products; thus, the cost of the injury is allocated to the consumer.² Legislators decided that "the cost of the product should bear the blood of the workman."³

Workers' compensation, in sharp contrast to negligence concepts, must be paid regardless of who, if anyone, is at fault.⁴ In Ohio, and in most states, a worker is entitled to compensation if the employee's injury was incurred "in the course of his employment and [arose] out of [his or her] employment."⁵ Workers' compensation becomes an employee's exclusive remedy for recovery. The Act insulates the employer from liability for common law torts.⁶ The benefits granted to the injured employee help mitigate the effects of the employee's injury; the employee is compensated for lost income caused by the injury and medical expenses.⁷ The injured employee and his or her dependents are entitled to benefits only if the statutory eligibility requirements are met.⁸ The benefits are paid from a state insurance fund to which employers pay periodic premiums. The amount paid by an employer is based on the degree of hazard of the employer's particular business; employers, however, can elect to become self-insurers and pay benefits directly to injured employees instead of contributing premiums to the state insurance fund.⁹ A determination of work-relatedness, not the degree of fault of the employer or employee, is critical to a claim for compensation.¹⁰ "[T]he test is not the relation of an individual's personal quality (fault) to an event, but the relationship of an event to an employment. The

1. N. WHITE & N. DOSKER, OHIO MANUAL OF COMPENSATION LAW V-VII(ann. 1920).

2. 1 A. LARSON, WORKMEN'S COMPENSATION §§ 1.20, 2.20 (1984).

3. W. PROSSER & W. KEETON, LAW OF TORTS § 80, at 573 (5th ed. 1984).

4. 1 A. LARSON, *supra* note 2, § 2.10.

5. OHIO REV. CODE ANN. § 4123.01(C) (Page Supp. 1983).

6. *Id.* § 4123.74 (Page 1980). *But see* Jones v. VIP Dev. Co., 15 Ohio St. 3d 90, 472 N.E.2d 1046 (1984); Blankenship v. Cincinnati Milacron Chems., Inc., 69 Ohio St. 2d 608, 433 N.E.2d 572 (1982) (Ohio Rev. Code § 4123.74 does not preclude an employee from bringing an action against his employer for an *intentional* tort.).

7. J. YOUNG, WORKMEN'S COMPENSATION LAW OF OHIO § 1.14 (2d ed. 1971).

8. OHIO REV. CODE ANN. § 4123.69 (Page 1980).

9. *See id.* §§ 4123.29, 4123.35 (Page 1980 & Supp. 1983).

10. 1 A. LARSON, *supra* note 2, § 2.10.

essence of applying the test is not a matter of assessing blame, but of marking out boundaries."¹¹ The difficulty lies in defining those boundaries.

In August 1983, the Ohio Supreme Court established a new course in identifying work-connected injuries. *Littlefield v. Pillsbury Co.*¹² marked a substantial turning point in Ohio workers' compensation law. An employee who was injured while returning to work from lunch was permitted to recover workers' compensation because his injury stemmed from a special risk emanating from his employment; this recovery precluded application of the general going and coming rule—a rule which denies compensation for injuries arising from accidents that occur while the employee is on the way to or from work.¹³ *Littlefield* is significant not only because of the context in which the accident occurred but also because of the policy ramifications underlying the decision. Individual workers will no longer bear the risk of certain travel-related injuries; instead, these costs will be allocated to the general consuming public.¹⁴

Littlefield distorts the application of the policies of the Ohio workers' compensation system and alters the method by which courts will determine whether an injury is work-related for workers' compensation cases. This Comment identifies and discusses the factual circumstances that warrant an application of the special risk exception as adopted in *Littlefield*. An understanding of those situations is crucial to formulate a workable rule for courts and practitioners. By viewing the special risk exception to the general going and coming rule as merely another means to arrive at a determination of work-connection—whether an injury occurred “in the course of” employment—the effects of *Littlefield* can be understood.

II. THE SPECIAL RISK EXCEPTION TO THE GOING AND COMING RULE

A. Statutory Requirements and the Distinction from Tort Law

Any discussion of work-connected injuries must begin with the general statutory mandate that an injury must occur in the “course of, and [must] aris[e] out of, the injured employee's employment to be compensable.”¹⁵ Ohio, as well as a majority of states, has adopted these deceptively simple words as the coverage formula for workers' compensation.¹⁶ The difficulty in applying this general and vague test to a real set of facts and circumstances accounts for the discrepancies in the court decisions that have discussed the test.

The few and seemingly simple words “arising out of and in the course of employment” have been the fruitful (or fruitless) source of a mass of decisions turning upon nice distinctions and supported by refinements so subtle as to leave the mind of the reader in

11. *Id.*

12. 6 Ohio St. 3d 389, 453 N.E.2d 570 (1983).

13. For an interesting comparison, see *Hawkins v. Connor*, No. 10-82-11 (Mercer County Ct. App. Aug. 12, 1983), a case decided two weeks before *Littlefield* on substantially similar facts, in which the court concluded that the employee could not recover compensation.

14. See *infra* text accompanying notes 207-10.

15. OHIO REV. CODE ANN. § 4123.01(C) (Page Supp. 1983).

16. See 1 A. LARSON, *supra* note 2, § 6.10.

a maze of confusion. From their number, counsel can, in most cases, cite whatever seems to be an authority for resolving in his favor, on whichever side he may be, the question in dispute.¹⁷

Perhaps much of the confusion arising from the application of the statutory test involves a misunderstanding of the purposes served by the two components of the test: (1) arising out of the employment and (2) in the course of employment. "Arising out of employment" has been defined as the causal relationship between the injury and the employment.¹⁸ For an injured employee to recover compensation, a direct causal connection must exist between the employment and the injury.¹⁹ Ohio courts, when determining whether the initiating cause of an injury was a hazard of the employment, thus meeting the causal connection requirement, have examined the circumstances of each case to determine whether the employee was subjected to any greater hazard than was a member of the general public.²⁰ Larson has identified this as the increased-risk test; a court that uses this test examines the frequency with which the employee encounters the risk, even though the risk may nevertheless be common to the general public.²¹ The increased risk test is applied by a majority of states when determining whether the "arising out of" requirement has been met.²²

The second component of the statutory test requires that the injury be received in the "course of employment." "In the course of employment" has been defined as the status of performing duties on behalf of the employer.²³ This inquiry focuses on the employee's activity at the time of the injury, rather than the causal connection between the injury and the employment.²⁴ The course-of-employment inquiry into work connection examines the time and place of the injury. If the employee's activity at the time the injury was inflicted was related to his employment, the injury occurred in the course of employment.²⁵

The statutory test thus may be subdivided into its two component parts: causal connection and work connection. The legislature must have intended that both parts of the test be satisfied in order for an injured worker to merit compensation. While courts have adopted tests to aid in applying the statutory mandate, they do not distinguish which component, arising out of or in the course of, they actually have addressed. The going and coming rule was adopted to aid in the determination of *work connection*, because an employee's activity when traveling to and from work is usually a personal risk and only indirectly related to the employment.²⁶ The special

17. 2 W. HANNA, CALIFORNIA LAW OF EMPLOYEE INJURIES AND WORKMEN'S COMPENSATION § 8.02[2][a](2d ed. 1980).

18. J. YOUNG, *supra* note 7, §§ 5.3, 5.12. See generally Johnson, *Workmen's Compensation*, 38 LA. L. REV. 483 (1973). The Ohio Constitution contains only the "course of employment" requirement. OHIO CONST. art. II, § 35. The "arising out of employment" component of the test emerged in *Fassig v. State ex rel. Turner*, 95 Ohio St. 232, 116 N.E. 104 (1917), was adopted by the legislature in 1937, and is codified at OHIO REV. CODE ANN. § 4123.01(C) (Page Supp. 1983). See J. YOUNG, *supra* note 7, § 5.12.

19. J. YOUNG, *supra* note 7, § 5.3.

20. *Id.*

21. 1 A. LARSON, *supra* note 2, § 6.30.

22. *Id.*

23. J. YOUNG, *supra* note 7, § 5.3.

24. *Id.*

25. 1 A. LARSON, *supra* note 2, § 14.00.

26. J. YOUNG, *supra* note 7, § 5.7.

risk exception adopted by the court in *Littlefield*²⁷ was applied as an exception to the going and coming rule. Thus, it seems that the court should have examined the work connection of Littlefield's injury. The court, however, focused on the existence or nonexistence of a special risk that is "distinctive in nature or quantitatively greater than risks common to the public,"²⁸ an examination into the *causal connection* between the injury and the employment. Specifically, an inquiry into whether a risk was quantitatively greater than a common risk restates the increased-risk doctrine used in "arising out of" analyses.²⁹ An inquiry into whether the risk was distinctive in nature, appears to be a resurrection of the criticized peculiar-risk doctrine, used in the early application of the "arising out of" test.³⁰

The application of the two-part statutory test has been far from conceptually pure.³¹ Because the court has not provided clear guidance for a well-reasoned analysis, the facts and circumstances of each case must be examined to determine whether an injury is compensable. The best guidance comes from comparing and contrasting the facts of prior cases with the facts of a current case. A mere incantation of the words "distinctive in nature or quantitatively greater" risk is not sufficient. A determination of whether an injury was received in the "course of and arising out of" employment can be resolved only by examining all of the facts and circumstances relevant to both causal connection and work connection. Larson has indicated that courts actually apply a quantum theory of work connection, whereby a strong causation factor may offset a weak work connection factor and a weak causation factor may be offset by a strong work connection factor.³² The application of the *Littlefield* special risk exception should be resolved in a similar manner: by examining and weighing the facts related to both causation and work-connection.³³

In part, the confusion over the interpretation of these words also stems from the application of tort concepts to workers' compensation.³⁴ Again, however, the degree of work-connection, not the degree of fault, differentiates workers' compensation and tort law.³⁵ When applying principles of work-connection, tort law causation concepts, such as proximate and legal cause, must not be introduced into the analysis:

[P]roximate cause or legal cause is out of place in compensation law because, as developed in tort law, it is a concept that is itself thoroughly suffused with the idea of fault; that is, it is a theory of causation designed to bring about a just result when starting from an act containing some element of fault.³⁶

27. See *infra* text accompanying notes 62-64.

28. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 453 N.E.2d 570 (1983).

29. 1 A. LARSON, *supra* note 2, § 6.30.

30. See *id.* § 6.20.

31. See 1A A. LARSON, *supra* note 2, § 29.10; Malone, *The Limits of Coverage In Workmen's Compensation—The Dual Requirement Reappraised*, 51 N.C.L. REV. 705 (1973); Note, *Workmen's Compensation—"Injury . . . Received in the Course of, and Arising Out of, the Injured Employee's Employment,"* 30 U. CIN. L. REV. 498 (1961).

32. 1A A. LARSON, *supra* note 2, § 29.10.

33. See *infra* text accompanying notes 97-206.

34. 2 W. HANNA, *supra* note 17, § 8.02[2][b]; see also Larson, *The Legal Aspects of Causation In Workmen's Compensation*, 8 RUTGERS L. REV. 423 (1954).

35. See *supra* text accompanying notes 10-11.

36. 1 A. LARSON, *supra* note 2, § 6.60.

Workers' compensation and therefore a test of work-connection should not require that an injury was foreseeable or that an injury was proximately caused by an employment risk. Hence, in the famous case of *Palsgraff v. Long Island R.R.*,³⁷ if resulting from her employment, Mrs. Palsgraff's injuries from the explosion at the railroad station would have been compensable if they were incurred in the course of and arose out of her employment.

B. *The Going and Coming Rule*

To aid in interpreting "arising out of and in the course of employment," courts in Ohio and elsewhere have developed the going and coming rule in cases in which employees were traveling to and from work. In general, the going and coming rule provides that when employees who have a fixed situs of employment incur injuries while going to or coming from work, the injuries are not compensable.³⁸ Courts reason that the relationship between the employer and the employee ceases when the employee is traveling to and from work; during this travel time, the employee, in relation to the employer, is simply another member of the general public.³⁹ This judicially created rule of thumb separates business activities from personal activities. Injuries that occur while engaged in personal activities are not compensable.⁴⁰ Previously, courts easily applied the rule by relying on the physical property line of the employer's facility to distinguish when an employee is traveling to or from work and when the employee has resumed the course of his employment.⁴¹ An accident that occurred on the employer's premises was work-connected and thus compensable, but an accident that occurred off the premises was not. As a general proposition, an application of the rule produces just results in a broad range of cases, since most employees commuting to and from work or driving to and from lunch are not in the course of their employment. However, courts have had difficulty resolving cases that merit compensation but that, because the accident occurred off of the employer's premises, are precluded from coverage by the going and coming rule.

Courts have liberally applied exceptions to the judicially created going and coming rule, thus avoiding harsh results in compelling cases without entirely abrogating the general rule.⁴² Among the exceptions are the special mission exception,⁴³

37. 248 N.Y. 339, 162 N.E. 99 (1928).

38. *Bralley v. Daugherty*, 61 Ohio St. 2d 302, 303-04, 401 N.E.2d 448, 450 (1980); *Industrial Comm'n v. Gintert*, 128 Ohio St. 129, 190 N.E. 400 (1934); *Industrial Comm'n v. Heil*, 123 Ohio St. 604, 176 N.E. 458 (1931); 1 A. LARSON, *supra* note 2, § 15.00; J. YOUNG, *supra* note 7, § 5.7.

39. 8 W. SCHNEIDER, *WORKMEN'S COMPENSATION* § 1710 (3d ed. 1951).

40. J. YOUNG, *supra* note 7, § 5.7.

41. 1 A. LARSON, *supra* note 2, § 15.11.

42. S. HOROVITZ, *HOROVITZ ON WORKMEN'S COMPENSATION* 162 (1944); 1 A. LARSON, *supra* note 2, § 15.12; 8 W. SCHNEIDER, *supra* note 39, § 1712; Cooper, *The "Operating Premises" Exception To The Going and Coming Rule*, 59 KY. L.J. 145 (1970); Davis, *Workmen's Compensation in Connecticut—The Necessary Work Connection*, 7 CONN. L. REV. 199 (1974-75); Note, *Workmen's Compensation—Compensation For Off-Premises Work Break Injury—Pacheco v. Orchids of Hawaii*, 14 B.C. INDUS. AND COM. L. REV. 1104 (1972-73); Note, *Workers' Compensation In Iowa—The Going And Coming Rule And Its Exceptions*, 27 DRAKE L. REV. 688 (1977-78); Note, *The Going and Coming Rule*, 41 NOTRE DAME L. 185 (1965); Note, *Workmen's Compensation—The "Going And Coming" Rule And Its Exceptions In Kentucky*, 47 KY. L.J. 420 (1959); Comment, *Workmen's Compensation: The "Going and Coming Rule" and its Exceptions in Arkansas*, 21 ARK. L. REV. 414 (1967) [hereinafter cited as Comment, *Workmen's Compensation*]; Case Comment, *Workmen's Compensation—Going and Coming Rule—Applicability of Close Proximity Exception to Lunch Hour Injuries*,

the close proximity exception,⁴⁴ the sole ingress and egress exception,⁴⁵ the travel in furtherance of an employer's business exception,⁴⁶ and the special hazard exception.⁴⁷ These exceptions to the general rule were created to compensate employees when they were acting in the course of their employer's business even though they were traveling to or from work. Often these exceptions are applied in situations that warrant compensation when the general rule would otherwise preclude it. If the exceptions are viewed as identifications of cases in which an ordinarily noncompensable activity actually occurs in the course of employment,⁴⁸ an analysis of the problem becomes simpler. While the exceptions narrow the scope of the general going and coming rule, they become important not because their use avoids the rule but because they define circumstances in which the finding of work-connection is based on the facts of individual cases.

C. The Special Risk Exception

When an employment relationship creates a special risk, the special hazard or risk exception applies. Injuries that occur within the scope of that risk are compensable.⁴⁹ Frequently, special risks are associated with hazards that affect the sole means of ingress or egress to the employer's premises.⁵⁰ The United States Supreme Court has validated the use of the special risk exception to compensate off-premises injuries, when the hazard endangered either the only means of access to the employer's premises or the most convenient means of access to the employer's premises.⁵¹ Employment hazards often extend beyond premises lines and create risks of employment.⁵² However, to be compensable the injury must have actually resulted from the special hazard emanating from the employment premises; an accident due to a nonemployment condition should not be compensable merely because a special risk

47 IOWA L. REV. 1174 (1962) [hereinafter cited as Case Comment, *Going and Coming Rule*]; Case Comment, *Workmen's Compensation—Injuries Sustained by Employee While Going to and from Work*, 36 N.C.L. REV. 367 (1958) [hereinafter cited as Case Comment, *Workmen's Compensation—Injuries*].

43. See generally *General Ins. Co. v. Workers' Comp. Appeals Bd.*, 16 Cal. 3d 595, 546 P.2d 1361, 128 Cal. Rptr. 417 (1976); *Schreifer v. Industrial Accident Comm'n*, 61 Cal. 2d 289, 391 P.2d 832, 38 Cal. Rptr. 352 (1964); *Perez v. Workers' Comp. Appeals Bd.*, 152 Cal. App. 3d 60, 199 Cal. Rptr. 280 (Ct. App. 1984); 2 W. HANNA, *supra* note 17, § 9.03[3][c][iv]; 1 A. LARSON, *supra* note 2, § 16.10.

44. See 1 A. LARSON, *supra* note 2, § 15.12; 8 W. SCHNEIDER, *supra* note 39, § 1724; Comment, *Workmen's Compensation*, *supra* note 28; Case Comment, *Going and Coming Rule*, *supra* note 28.

45. See 8 W. SCHNEIDER, *supra* note 38, §§ 1725–1731; Comment, *The Going and Coming Rule and Article 8309, Section 1b*, 22 S. L.J. 841 (1968); Case Comment, *Workmen's Compensation—Injuries*, *supra* note 28.

46. See 2 W. HANNA, *supra* note 17, § 9.03[1]; 1 A. LARSON, *supra* note 2, §§ 16.20, 16.30; 8 W. SCHNEIDER, *supra* note 39, § 1736.

47. See 1 A. LARSON, *supra* note 2, §§ 15.13, 15.31; Tobiason, *Peculiar Risk: Going or Coming?*, 14 IDAHO L. REV. 739 (1978); see also *infra* text accompanying notes 49–56.

48. See 2 W. HANNA, *supra* note 17, § 9.03[3][b], [c].

49. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 391, 453 N.E.2d 570, 573 (1983).

50. 1 A. LARSON, *supra* note 2, § 15.13.

51. *Bountiful Brick Co. v. Giles*, 276 U.S. 154 (1928); *Cudahy Packing Co. v. Parramore*, 263 U.S. 418 (1923). In both cases, the Court held that railroad crossings near the ingress and egress to the employer's premises were hazards of the employment, even though the crossings were not on the employer's premises. See also 1 A. LARSON, *supra* note 2, § 15.13.

52. 1 A. LARSON, *supra* note 2, § 15.31.

not located on the premises exists.⁵³ The injury must be "in the course of and arising out of" the employment.

While Ohio courts prior to *Littlefield* had not articulated the special risk exception,⁵⁴ California courts had applied the exception to situations when the employee had entered either the employer's premises or the means of access to the premises, even if the employer had no control over the entrance.⁵⁵ The special hazard exception, as adopted in Ohio, does not abrogate the going and coming rule but merely provides an additional avenue to avoid the rule's application.⁵⁶ Since the special risk exception operates as another method to determine whether a particular injury occurred in the course of employment, the factual circumstances of the accident become critical to an analysis of work-connection.

III. THE FACTS AND HOLDING OF *LITTLEFIELD V. PILLSBURY CO.*

On August 10, 1977, Ronald Littlefield, a grain operator, left work at the Pillsbury Company to go to a nearby local restaurant for lunch. Since Littlefield was required to work during his usual paid fifteen minute break, he added fifteen minutes to his otherwise unpaid thirty minute lunch.⁵⁷ Food was unavailable at the plant, and Pillsbury occasionally paid for employees' meals at the restaurant at which Littlefield ate the day he was injured. The employer chose this restaurant to occasionally provide meals for its employees because the restaurant was near the plant.⁵⁸

On the return to the plant, the driver of the car in which Littlefield was a passenger stopped the car on the highway and waited to make a left-hand turn into the sole plant entrance. While stopped, the car was struck from behind by a grain truck. Littlefield was severely injured; quadriplegia resulted.⁵⁹ Littlefield sought workers' compensation benefits for his injuries but was denied any award at the district and regional levels. The Industrial Commission refused to hear his appeal. On appeal to the court of common pleas, it was held that Littlefield's injuries occurred "in the course of and [arose] out of his employment."⁶⁰ The court of appeals reversed the common pleas court's holding for lack of causal connection between Littlefield's injuries and his employment.⁶¹

The Ohio Supreme Court, in a four to three decision, reversed the court of appeals and held that Littlefield's injuries were compensable even though they were

53. *Id.*

54. *See infra* text accompanying notes 63-64.

55. *See, e.g., Parks v. Workers' Comp. Appeals Bd.*, 33 Cal. 3d 585, 589, 660 P.2d 382, 384, 190 Cal. Rptr. 158, 160 (1983).

56. For an illustration of the court's tendency to qualify overly-broad pronouncements of law, compare *Haverlack v. Portage Homes, Inc.*, 2 Ohio St. 3d 26, 442 N.E.2d 749 (1982) (eliminating municipal tort immunity) with later decisions applying immunity to a municipal corporation's actions involving the exercise of a legislative or judicial function, or an executive or planning function involving a high degree of official discretion. This phenomenon was noted in Porter & Tarr, *The New Judicial Federalism and the Ohio Supreme Court: Anatomy of a Failure*, 45 Ohio St. L.J. 143, 152 n.72 (1984).

57. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 389, 453 N.E.2d 570, 571-72 (1983).

58. *Id.* at 389-90, 453 N.E.2d at 572.

59. *Id.* at 390, 453 N.E.2d at 572.

60. *Id.*

61. *Id.*

sustained while Littlefield was not on the employer's premises and were incurred during Littlefield's lunch hour.⁶² Although the going and coming rule generally obviates a recovery by an employee injured while traveling to and from a fixed and limited place of employment, the *Littlefield* court recognized the special hazard or risk exception in an effort to circumvent application of the general rule when the employment creates special risks that extend beyond the employer's premises line.⁶³ Although Ohio had not expressly adopted the special risk exception prior to *Littlefield*,⁶⁴ the court noted a number of other jurisdictions which recognize the exception when presented with facts similar to *Littlefield*.⁶⁵

The court particularly emphasized the 1932 case of *Industrial Commission v. Henry*.⁶⁶ In *Henry*, the employee left his employer's premises to eat breakfast. The employer acquiesced in this practice, because by eating a later breakfast, the employees could more efficiently deliver the employer's milk. Upon returning to the workplace, the worker was struck and killed by an oncoming train at a railroad crossing immediately adjacent to the employer's premises.⁶⁷ Since the employee had to cross the railroad tracks to reach the sole entrance to his employment, the *Henry* court found the railroad crossing to be an extension of the employer's premises.⁶⁸ The court awarded compensation.

The *Littlefield* court used logic similar to that used by the *Henry* court to find that the employee's lunch benefitted his employer.⁶⁹ The *Littlefield* court noted several similarities to *Henry*. First, in both cases, the restaurant was near the employer's premises.⁷⁰ Second, the return trip to the plant from the restaurant did not deviate.⁷¹ Finally, the court found significant Pillsbury's history of occasionally paying for employees' beverages and food at the restaurant.⁷² The court deemed these similar-

62. *Id.* at 390, 453 N.E.2d at 572.

63. *Id.*

64. *Id.* at 392, 453 N.E.2d at 574. The court cited several Ohio cases that had impliedly recognized the special risk exception. *See, e.g.,* Marlow v. Goodyear Tire and Rubber Co., 10 Ohio St. 2d 18, 225 N.E.2d 241 (1967); Sebek v. Cleveland Graphite Bronze Co., 148 Ohio St. 693, 76 N.E.2d 892 (1947); Gregory v. Industrial Comm'n, 129 Ohio St. 365, 195 N.E. 699 (1935); Kasari v. Industrial Comm'n, 125 Ohio St. 410, 181 N.E. 809 (1932); Industrial Comm'n v. Henry, 124 Ohio St. 616, 180 N.E. 194 (1932).

65. *See* Greydanus v. Industrial Accident Comm'n, 63 Cal. 2d 490, 407 P.2d 296, 47 Cal. Rptr. 384 (1965); Pacific Indem. Co. v. Industrial Accident Comm'n, 28 Cal. 2d 329, 170 P.2d 18 (1946); Oliver v. Wyandotte Indus. Corp., 308 A.2d 860 (Me. 1973); Husted v. Seneca Steel Serv., Inc., 41 N.Y.2d 140, 359 N.E.2d 673, 391 N.Y.S.2d 78 (1976).

66. 124 Ohio St. 616, 180 N.E. 194 (1932).

67. *Id.* at 617-18, 621, 180 N.E. at 195-96.

68. *Id.* at 621-22, 180 N.E. at 196.

69. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 394-95, 453 N.E.2d 570, 576 (1983). *See* Justice Locher's dissent to *Littlefield* for a criticism of the "benefit to employer" argument. *Id.* at 403, 453 N.E.2d at 582; *see also infra* text accompanying notes 190-205.

70. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 394, 453 N.E.2d 570, 575 (1983). However, the proximity of the accident to the premises is the critical factor, not necessarily the proximity of the ultimate destination of the employee's personal trip. *See infra* text accompanying notes 107-52.

71. The lack of deviation, however, is relevant only to travel that furthers the employer's business, not to personal travel. *See* 1 A. LARSON, *supra* note 2, § 19.00.

72. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 394, 453 N.E.2d 570, 575-76 (1983). Because the employer occasionally financed the lunches, it appears that the employer acquiesced in the lunch breaks, an issue certainly not in dispute. A paid lunch break, however, more strongly supports a finding of work-connection. *See* J. YOUNG, *supra* note 7, § 5.5.

ities with *Henry* important in its analysis that executing a left-hand turn into Pillsbury's premises related to Littlefield's employment.⁷³

The *Littlefield* court adopted the two-prong test used by the California Supreme Court in *General Insurance Co. v. Workers' Compensation Appeals Board*⁷⁴ to determine when the special hazard rule applies. The *General Insurance* test provides that the special hazard rule applies "(1) if 'but for' the employment, the employee would not have been at the location when the injury occurred and (2) if the risk is distinctive in nature or quantitatively greater than risks common to the public."⁷⁵ Applying this test to *Littlefield*, the court found that Littlefield would not have been making a left turn into the plant but for his employment. The first element of the test was thus satisfied. In addition, the regular exposure to the common risk of traveling on and turning left from a busy road adjacent to his place of employment involved a greater degree of risk for Littlefield than for the general public. The court found that this satisfied the second requirement of the special risk test. Consequently, both a special risk and a connection between Littlefield's work and his injury existed.⁷⁶

Three justices, in a sharp dissenting opinion, criticized the *Littlefield* majority's reliance on case law from other jurisdictions and distinguished the Ohio precedent on which the majority relied.⁷⁷ The dissenting opinion noted that compensated injuries in previous Ohio cases occurred on the employer's premises, a factor noticeably absent in *Littlefield*.⁷⁸ Carried to its logical extension, the special hazard test enunciated by the court was criticized as extending workers' compensation coverage to all accidents, whether employment-related or not. According to the dissenting justices, the "but for" standard employed by the majority had historically been used to shield defendants from tort liability rather than to establish liability.⁷⁹ Additionally, the dissenters noted that the correct standard for determining work connection is the existence of a proximate causal relationship between the employment and the injury not the "but for" test.⁸⁰

IV. FACTUAL ANALYSIS OF THE SPECIAL RISK EXCEPTION

A. The "But For" Test

If the employee would not have been at the place where the injury occurred "but for" his employment the first prong of the *Littlefield* test is satisfied.⁸¹ In *Littlefield*, the court found that but for his employment, Littlefield would not have been making

73. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 394-95, 453 N.E.2d 570, 576 (1983).

74. 16 Cal. 3d 595, 546 P.2d 1361, 128 Cal. Rptr. 417 (1976).

75. *Id.* at 601, 546 P.2d at 1364, 128 Cal. Rptr. at 420.

76. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 394, 453 N.E.2d 570, 575 (1983).

77. *Id.* at 396-404, 453 N.E.2d at 577-83 (Locher, J., dissenting).

78. *Id.* at 399-401, 453 N.E.2d at 579-80.

79. *Id.* at 397, 453 N.E.2d at 578.

80. *Id.* at 397-98, 453 N.E.2d at 578 (citing *McNees v. Cincinnati St. Ry. Co.*, 152 Ohio St. 269, 89 N.E.2d 138 (1949)). By noting that work connection requires a proximate, causal relationship, the dissenters appear to have deemed both "in the course of" and "arising out of" necessary requirements.

81. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 394, 453 N.E.2d 570, 575 (1983).

a left-hand turn into the employer's premises.⁸² Similarly, in *Parks v. Workers' Compensation Appeals Board*,⁸³ Sandra Parks, a teacher, had left the school parking lot and was driving home on a public street when she was injured. While Parks' car and several other cars were stopped in front of the school waiting for a group of schoolchildren to cross the road, three youths opened Parks' car door and stole her purse.⁸⁴ The court held that Parks would not have been injured "but for" her employment. The problem with this finding, however, is the potential extension of the "but for" rationale; if Parks were assaulted in her driveway while returning home from work, the same result could follow: "but for" her employment, she would not have been in the driveway at that particular moment. Likewise, if she had slipped in the bathtub while getting ready to go to school, the "but for" test would be met;⁸⁵ but for her employment, Parks would have remained in bed and would not have been in the shower.

In *General Insurance Co. v. Workers' Compensation Appeals Board*⁸⁶ an employee's death was found to be causally related to his employment, since "but for" his job, he would not have been killed. The deceased employee, Chairez, had left for work early one morning. When he stepped out of his car, which was parked on the street in front of the employer's premises, he was struck by a passing car and killed.⁸⁷ The court found the employee's death causally related to his employment. Compensation was denied, however, because the court concluded that his death did not arise out of a distinctive or quantitatively greater risk than that encountered by the public.⁸⁸

The *General Insurance* court, the progenitor of the two-prong test, seemed to use the "but for" test as a threshold requirement to recover under the exception created by a special risk—a test of legal causation.⁸⁹ This causal relationship has no relation to the existence of a special risk to the employee.⁹⁰ Hence, the *Littlefield* dissenting justices correctly labeled the "but for" test a device used to exclude defendants from liability rather than as one to establish it.⁹¹

[A]t most [the but for test] must be a rule of exclusion: if the event would not have occurred "but for" the defendant's negligence, it still does not follow that there is liability, since other considerations . . . may prevent it. It should be quite obvious that, once events are set in motion, there is, in terms of causation alone, no place to stop.⁹²

Professor Larson identifies the "but for" test as the positional risk test to determine whether the injury "arises out of the employment"—an inquiry into causal

82. *Id.*

83. 33 Cal. 3d 585, 660 P.2d 382, 190 Cal. Rptr. 158 (1983).

84. *Id.* at 587, 660 P.2d at 383, 190 Cal. Rptr. at 159.

85. See *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 397, 453 N.E.2d 570, 577 (1983) (Locher, J., dissenting), where Justice Locher made this argument.

86. 16 Cal. 3d 595, 546 P.2d 1361, 128 Cal. Rptr. 417 (1976).

87. *Id.* at 598, 546 P.2d at 1362, 128 Cal. Rptr. at 418.

88. *Id.* at 601, 546 P.2d at 1346, 128 Cal. Rptr. at 420.

89. *Id.*

90. *Id.* The "but for" test can perhaps be characterized as the test to determine whether the "arising out of" requirement has been met.

91. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 397, 453 N.E.2d 570, 578 (1983) (Locher, J., dissenting).

92. W. PROSSER & W. KEETON, *supra* note 3, § 41, at 266.

connection.⁹³ However, in cases when the going and coming rule applies, causation is rarely a problem; courts usually find that the injury arose out of the employment.⁹⁴ The critical issue in going and coming rule cases is whether the injury occurred in the "course of employment"—a time and place factual inquiry.⁹⁵ The use of the "but for" test in applying the special risk exception seems to be a harmless exercise, as long as it is not confused with a determination of whether the injury was received in the course of the employee's employment. While the "but for" test is concerned with causal connection, which is usually not at issue in *Littlefield*-type cases, the "nature or greater risk"⁹⁶ test is a purely factual inquiry into work-connection, not work causation.

B. The "Distinctive in Nature or Quantitatively Greater Risk" Test

The second prong of the *General Insurance* test requires the risk to be "distinctive in nature or quantitatively greater than risks common to the public."⁹⁷ The *Littlefield* court found that regular exposure to the risk of driving on a busy highway and to the added risk of making a left-hand turn magnified the common risk to the worker; thus, the *General Insurance* test's second prong was met, justifying application of the special hazard exception.⁹⁸ A risk that is distinctive in nature or quantitatively greater than a common risk, however, is difficult to define. In *Littlefield*, because the employee executed the left turn into the employer's premises each day, the common risk became quantitatively greater; by contrast, in *General Insurance*, parking on a busy street that was adjacent to the employer's premises was not a risk to which the rule applied.⁹⁹

The two-pronged test should be applied on an ad hoc basis, and not as a mechanical formula. The facts and circumstances of an accident must be compared with the facts and circumstances of similar cases to determine whether an injury has occurred in the course of employment. The Ohio work-connection test requires the existence of a direct or indirect connection between the injury and the activities, conditions, or environments of the employment.¹⁰⁰ In reality, the special hazards test requires only a determination of work connection that is similar to many other exceptions to the general going and coming rule.¹⁰¹ Since the course of employment analysis is widely recognized as an inquiry into the facts surrounding an accident,¹⁰² a court applying the second prong of the special hazard test should examine the factual circumstances of other, related cases.

93. 1 A. LARSON, *supra* note 2, §§ 15.00, 14.00; *see supra* text accompanying notes 18–22.

94. 1 A. LARSON, *supra* note 2, § 15.15.

95. *Id.*

96. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 394, 453 N.E.2d 570, 575 (1983).

97. *General Ins. Co. v. Workers' Comp. Appeals Bd.*, 16 Cal. 3d 595, 601, 546 P.2d 1361, 1364, 128 Cal. Rptr. 417, 420 (1976); *see also Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 394, 453 N.E.2d 570, 575 (1983).

98. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 394, 453 N.E.2d 570, 575 (1983).

99. *General Ins. Co. v. Workers' Comp. Appeals Bd.*, 16 Cal. 3d 595, 601, 546 P.2d 1361, 1364, 128 Cal. Rptr. 417, 420 (1976).

100. *Industrial Comm'n v. Weigandt*, 102 Ohio St. 1, 130 N.E. 38 (1921).

101. *See supra* text accompanying notes 28–33.

102. *See* 1 A. LARSON, *supra* note 2, § 14.00; J. YOUNG, *supra* note 7, § 5.3.

Generally, fact patterns in special risk cases come within one of four categories in which work-connection can be analyzed: (1) the proximity of the accident to the employer's premises,¹⁰³ (2) the employer's control over the location of the accident,¹⁰⁴ (3) the instrumentality or person physically affecting the accident,¹⁰⁵ and (4) the benefit to the employer from the employee's activity at the time of the accident.¹⁰⁶ Each of these categories is examined below.

1. *The Proximity of the Accident to the Employer's Premises*

Ohio recognizes that injuries that occur on the employer's premises are prima facie within the course of employment.¹⁰⁷ Accidents that occur after the worker physically enters the employer's property, even though he is technically not yet at work, are considered to result from hazards of the employment.¹⁰⁸ The premises rule has been a fairly objective standard by which to decide going and coming rule cases.¹⁰⁹ However, problems arise with accidents that occur adjacent to, but on the other, nonemployer owned, side of the premises line.¹¹⁰ Often, a work-related injury which should be compensated occurs when the employee is not physically on the employer's premises. Arguably, an exception to or extension of the general rule is necessary. However, if compensation is awarded in cases when the accident occurs a few feet farther from the premises line each time, a case-by-case encroachment of the general rule results.¹¹¹ A standard less concrete than the premises line also decreases the predictability of a rule to determine when workers' compensation should be awarded.

California law permits a person to be compensated for an injury if it occurs within a reasonable margin of time and space from the employment.¹¹² This approach circumvents the application of the mechanical premises standard. In *Pacific Indemnity Co. v. Industrial Accident Commission*,¹¹³ an employee's car was struck when only half of it was in his employer's parking lot. The court held that the employee's injuries were compensable even though the accident did not occur entirely on the premises; "borderline cases" are within a "reasonable margin of time and space" from the premises.¹¹⁴

103. *Industrial Comm'n v. Weigandt*, 102 Ohio St. 1, 130 N.E. 38 (1921).

104. *Id.*

105. This category has not been expressly recognized, but plays a part in "course of employment" analyses. See *infra* text accompanying notes 171-89.

106. *Industrial Comm'n v. Weigandt*, 102 Ohio St. 1, 130 N.E. 38 (1921); see *Lord v. Daugherty*, 66 Ohio St. 2d 441, 423 N.E.2d 96 (1981); *Industrial Comm'n v. Gintert*, 128 Ohio St. 129, 190 N.E. 400 (1934).

107. *J. Young*, *supra* note 7, § 5.8.

108. *Kasari v. Industrial Comm'n*, 125 Ohio St. 410, 181 N.E. 809 (1932).

109. *1 A. LARSON*, *supra* note 2, § 15.11.

110. *Id.*

111. *Id.* § 15.12; see, e.g., *Levine v. Haddon Hall Hotel*, 66 N.J. 415, 332 A.2d 193 (1975); *Hornyak v. Great A. & P. Tea Co.*, 63 N.J. 99, 305 A.2d 65 (1973).

112. See, e.g., *Parks v. Workers' Comp. Appeals Bd.*, 33 Cal. 3d 585, 660 P.2d 382, 190 Cal. Rptr. 158 (1983); *General Ins. Co. v. Workers' Comp. Appeals Bd.*, 16 Cal. 3d 595, 546 P.2d 1361, 128 Cal. Rptr. 417 (1976); *Greydanus v. Industrial Accident Comm'n*, 63 Cal. 2d 490, 407 P.2d 296, 47 Cal. Rptr. 384 (1965).

113. 28 Cal. 2d 329, 170 P.2d 18 (1946).

114. *Id.* at 336, 170 P.2d at 22.

The distance between an accident and the employer's premises was extended further in *Greydanus v. Industrial Accident Commission*.¹¹⁵ In *Greydanus*, an employee's car was struck a few feet from his employer's premises while the employee was turning left from a highway. The court affirmed the commission's finding that the employee was injured in the course of his employment. The court relied on a reasonableness standard in determining whether the accident occurred "on the employer's premises."¹¹⁶ Critics argue that the "reasonable distance" analysis abrogates the premises rule by extending the premises line a few feet at a time, without providing a workable analysis for close cases.¹¹⁷

Ohio has not adopted the reasonable distance theory; instead, Ohio courts have employed a "zone of employment" rule; injuries that occur within the zone of employment are compensable.¹¹⁸ In *Marlow v. Goodyear Tire and Rubber Co.*,¹¹⁹ the Ohio Supreme Court articulated the zone of employment rule. While Marlow was driving his car out of a parking garage owned and maintained by the employer, he was hit by another car and was injured.¹²⁰ The court held that an employee does not necessarily need to be engaged in some specific duty of employment at the time of the accident, nor does the risk need to be peculiar to his employment in order to be compensated for his injuries; so long as the employee is injured in the zone of his employment, he is eligible to receive workers' compensation.¹²¹ Similarly, in *Kasari v. Industrial Commission*,¹²² the court upheld the award of compensation to the widow of an employee who was killed when entering his employer's premises: "Traversing the zone between the entrance of the employer's premises and the plant where an employee is employed, is one of the hazards of the employment."¹²³ Until *Littlefield*, however, no Ohio court had extended the zone of employment to areas not on the employer's premises, unless the employee had already reached his employer's parking lot and was crossing the highway to his workplace.

In *Littlefield*, Littlefield was injured on a public highway immediately adjacent to his employer's premises.¹²⁴ Like the hazard presented by *Industrial Commission v. Henry*,¹²⁵ the employment hazard extended just beyond the employer's premises. In both cases, the court awarded the plaintiffs compensation for the injuries. The problem with these cases is the seemingly unbounded limitation of the general going and coming rule. Without applying the objective limit of the premises line, the extension of employment hazards appears to be limitless. In addition it complicates the predictability of the general rule. As noted in the *Littlefield* dissent, Justice

115. 63 Cal. 2d 490, 407 P.2d 296, 47 Cal. Rptr. 384 (1965).

116. *Id.* at 492, 407 P.2d at 298, 47 Cal. Rptr. at 386.

117. 1 A. LARSON, *supra* note 2, § 15.12. *Contra* S. HOROVITZ, *supra* note 42, at 159-62.

118. *Marlow v. Goodyear Tire and Rubber Co.*, 10 Ohio St. 2d 18, 225 N.E.2d 241 (1967); *Kasari v. Industrial Comm'n*, 125 Ohio St. 410, 181 N.E. 809 (1932).

119. 10 Ohio St. 2d 18, 225 N.E.2d 241 (1967).

120. *Id.*; see also *Bussell v. Mattin*, 3 Ohio App. 3d 339, 445 N.E.2d 696 (Ct. App. 1981), based on similar facts.

121. *Marlow v. Goodyear Tire and Rubber Co.*, 10 Ohio St. 2d 18, 22-23, 225 N.E.2d 241, 244-45 (1967).

122. 125 Ohio St. 410, 181 N.E. 809 (1932).

123. *Id.* at 410, 181 N.E. at 809.

124. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 390, 453 N.E.2d 570, 572 (1983).

125. 124 Ohio St. 616, 180 N.E. 194 (1932).

Locher's fear that a "slip in the bathtub" will someday be considered "in the course of employment" evidences the need for some clear guidelines.

Three Ohio cases involving zone of employment injuries provide some parameters for off-premises accidents. In *Baughman v. Eaton Corp.*,¹²⁶ the court, in a per curiam opinion, found that an employee injured while crossing a public street separating the employer's parking lot and the employer's premises was acting in the course of his employment.¹²⁷ The brevity of the court's analysis is striking. The court gave only a cursory statement that it would be "unreasonable" to deny compensation but failed to provide any explanation for its conclusion.¹²⁸ However, *Baughman* may be distinguished from *Littlefield* because in *Baughman*, the plaintiff had reached the employer's parking lot, and thus, had reached his zone of employment.¹²⁹

In *Bralley v. Daugherty*,¹³⁰ the employee, Bralley, while driving to work, was injured in an accident at the crossing of a railroad siding and a private road that was maintained and owned by an industrial park developer. The accident occurred approximately one-third mile from the employer's facility.¹³¹ The court denied Bralley compensation and emphasized the long distance between the location of the accident and the employer's facility as the reason for its decision. In *Industrial Commission v. Henry*¹³² the accident that injured the employee occurred immediately adjacent to the employer's premises and thus compensation was justified.¹³³

Justice Brown concurred in *Littlefield* and emphasized the difference between an accident occurring immediately adjacent to the employer's premises, and one occurring one-third mile from the employer's premises.¹³⁴ The employee in *Bralley* encountered a special risk since she had to traverse a railroad crossing on her way to work each day.¹³⁵ Simplifying the outcome in *Bralley*, it can be argued that accidents that occur one-third mile from the employer's premises are beyond the reach of the special hazard exception.

Finally, the *Littlefield* majority relied on a factual similarity with *Industrial Commission v. Henry*,¹³⁶ a fifty year-old decision that granted compensation for an off-premises injury. The employee, Henry, arrived at his place of employment early in the morning and left shortly thereafter to eat breakfast at a nearby restaurant.¹³⁷ Upon returning to his employer's plant, Henry was struck and killed by a train that was crossing the street immediately adjacent to the premises.¹³⁸ In *Henry*, as in *Littlefield*, the court found that the existence of a hazard immediately adjacent to the

126. 62 Ohio St. 2d 62, 402 N.E.2d 1201 (1980).

127. *Id.* at 62-63, 402 N.E.2d at 1202.

128. *Id.* at 63, 402 N.E.2d at 1202.

129. *Id.*; see also *Blair v. Daugherty*, 60 Ohio App. 2d 165, 396 N.E.2d 238 (Ct. App. 1978).

130. 61 Ohio St. 2d 302, 401 N.E.2d 448 (1980).

131. *Id.* at 302, 401 N.E.2d at 449.

132. 124 Ohio St. 616, 180 N.E. 194 (1932).

133. *Bralley v. Daugherty*, 61 Ohio St. 2d 302, 306, 401 N.E.2d 448, 450 (1980); see also *Spellman v. Industrial Comm'n*, 73 Ohio App. 369, 51 N.E.2d 414 (Ct. App. 1943).

134. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 395-96, 453 N.E.2d 570, 576 (1983) (Brown, J., concurring).

135. *Bralley v. Daugherty*, 61 Ohio St. 2d 302, 302, 401 N.E.2d 448, 449 (1980).

136. 124 Ohio St. 616, 180 N.E. 194 (1932).

137. *Id.* at 617-18, 180 N.E. at 195.

138. *Id.*

sole means of ingress and egress to the employer's facility fulfilled the necessary connection with work;¹³⁹ Henry, like Littlefield, could not enter the premises without encountering the hazard.¹⁴⁰

In terms of the proximity of the accident to the employer's premises, *Littlefield* appears to be a modern restatement of the *Henry* rationale. In both cases the accident occurred immediately adjacent to the sole means of ingress and egress. The court's emphasis on a *sole* means of ingress and egress to the employer's facility implies that if Littlefield could have avoided the risk of this particular left turn by traveling to another entrance, the outcome would be less clear. Examining the number of entrances to the employer's premises introduces an element of fault into the liability analysis. A worker could be precluded from recovering compensation if he were negligent in encountering an unnecessary risk.¹⁴¹ Yet fault is not relevant in workers' compensation cases.¹⁴² An employment hazard should not be treated as a lesser risk than one common to the public in general if the special risk exception would otherwise be met.

Two California cases, discussed by the *Littlefield* court, aid in defining the parameters of the proximity factor. In *General Insurance Co. v. Workers' Compensation Appeals Board*,¹⁴³ the California Supreme Court refused to find a work connection in a fact pattern analogous to *Littlefield* and *Henry*. In *General Insurance*, the employee, Chairez, had been hit and killed by a passing car after parking his own car on the street in front of his employer's premises.¹⁴⁴ The court distinguished the left-hand turn cases of *Greydanus*¹⁴⁵ and *Pacific Indemnity*.¹⁴⁶ In those cases, the employees were injured while turning left from a highway onto the employer's premises.¹⁴⁷ The *General Insurance* court held that the type of risk the worker faced in *General Insurance* was different than in the left-hand turn cases: turning left off a busy highway is a distinct risk from opening a car door on a busy highway.¹⁴⁸ The distinction, however, seems artificial. Both risks are encountered in areas immediately adjacent to the employer's premises. Chairez could have parked and been struck on any street, and Littlefield probably made several left-hand turns on his way to and from work. Chairez's accident occurred even closer to his employment than the teacher's accident in *Parks v. Workers' Compensation Appeals Board*,¹⁴⁹ which

139. *Id.* at 621-22, 180 N.E. at 196.

140. *Id.*

141. *See Collier v. B. F. Goodrich Co.*, 90 Ohio App. 181, 104 N.E.2d 600 (Ct. App. 1950).

142. *See supra* text accompanying notes 10-11, 34-37.

143. 16 Cal. 3d 595, 546 P.2d 1361, 128 Cal. Rptr. 417 (1976).

144. *Id.*

145. *Greydanus v. Industrial Accident Comm'n*, 63 Cal. 2d 490, 407 P.2d 296, 47 Cal. Rptr. 384 (1965).

146. *Pacific Indem. Co. v. Industrial Accident Comm'n*, 28 Cal. 2d 329, 170 P.2d 18 (1946).

147. *General Ins. Co. v. Workers' Comp. Appeals Bd.*, 16 Cal. 3d 595, 600-01, 546 P.2d 1361, 1364, 128 Cal. Rptr. 417, 420 (1976).

148. *Id.*

149. 33 Cal. 3d 585, 660 P.2d 382, 190 Cal. Rptr. 158 (1983); *see supra* text accompanying notes 83-85.

occurred "one or two car lengths on a public street from the school where she taught."¹⁵⁰

Certainly the proximity of the accident to the employer's premises is one of the most important facts to be considered in determining whether an injury was received in the course of employment.¹⁵¹ Hence, the greater the distance between the accident site and the employer's premises, the more attenuated the connection between the employment and the accident becomes. It is equally clear that the premises line is no longer the line of demarcation between work-related and personal injuries. *Bralley* and *Henry* appear to involve the same risk, a railroad crossing. The only meaningful distinction between the two cases is the difference between twenty-five or thirty feet from the employer's property and one-third mile from the employer's property.¹⁵² An accident occurring one-third mile or farther from the employer's premises will be noncompensable if the facts other than distance are identical to *Henry* or *Littlefield*.

2. The Employer's Control Over the Location of the Accident

Focusing on the degree of control exerted by the employer over the physical location of the accident is justified to determine whether an injury occurred in the course of employment.¹⁵³ The more control an employer exerts over an area, the greater the relationship between the hazard and the employment. If the employer can control the area in which the injury-causing accident occurred, the employer can eliminate the hazard and thereby reduce his costs.¹⁵⁴ An injury is not work connected in cases when the employer had no power to prevent the accident. To find otherwise would undermine the basic axioms of workers' compensation; the employer cannot control or eliminate the risk and thus, the cost of injuries caused by the risk should not be added to the cost of the product and borne by the general public.¹⁵⁵

The *Littlefield* court did not discuss Pillsbury's control over the location of the accident. Employer control need not be confined to its physical premises. An employer can control areas that extend beyond the employer's premises.¹⁵⁶ Pillsbury did not own the public highway on which Littlefield was injured, but the company could have cooperated with government authorities to provide an alternative, less dangerous means of entrance to its facilities. In contrast, Pillsbury could not have controlled intersections that were not "immediately adjacent"¹⁵⁷ to the plant. The extent to which the employer can actually control or at least affect the location of the

150. *Parks v. Workers' Comp. Appeals Bd.*, 33 Cal. 3d 585, 587, 660 P.2d 382, 383, 190 Cal. Rptr. 158, 159 (1983); see also *Lefebvre v. Workers' Comp. Appeals Bd.*, 106 Cal. App. 3d 745, 165 Cal. Rptr. 246 (Ct. App. 1980)(injury occurring within 100 feet of premises held compensable); *Mission Ins. Co. v. Workers' Comp. Appeals Bd.*, 84 Cal. App. 3d 50, 148 Cal. Rptr. 292 (Ct. App. 1978)(one and one-half miles from employer's premises too far).

151. "As might be expected of a rule that is sometimes called the 'proximity' or 'threshold' rule, the sheer distance of the special hazard from the premises may be an important factor in blocking application of the rule." 1 A. LARSON, *supra* note 2, § 15.13.

152. *Bralley v. Daugherty*, 61 Ohio St. 2d 302, 302, 401 N.E.2d 448, 449 (1980); *Industrial Comm'n v. Henry*, 124 Ohio St. 616, 618, 180 N.E. 194, 195 (1932).

153. *Lord v. Daugherty*, 66 Ohio St. 2d 441, 423 N.E.2d 96 (1981).

154. See *infra* text accompanying notes 207-10.

155. See *supra* text accompanying note 9.

156. J. YOUNG, *supra* note 7, § 5.6.

157. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 390, 453 N.E.2d 570, 572 (1983).

accident should weigh heavily in the inquiry into whether an injury is work-connected. If an employer can control an area, either directly or indirectly, injuries that result from accidents that occur in the area should be deemed to be related in some manner to the employment. Accordingly, compensating the injury can be justified.¹⁵⁸

In *Industrial Commission v. Barber*,¹⁵⁹ the employee was injured on a public street that was maintained by his employer. The street led only to the employer's facility.¹⁶⁰ The Ohio Supreme Court found that the employer controlled the road and thus determined that the employee's injury was sufficiently work-connected to warrant the award of workers' compensation. Unlike the premises theory, it is not necessary that the employer own the specific piece of property in order to find that the employer "controls" the area. Rather, if the employer can exercise any influence to decrease the dangers of an area, the employer might have sufficient control for a court to find an injury that occurs within the area to be work-related.¹⁶¹ Even though the employer in *Barber* did not "own" the street on which the employee was injured, the employer could have exercised control over it¹⁶² by persuading and lobbying civic authorities to eliminate its hazards. Hence, because the employer indirectly controlled the street, the employee's injury was work-related.¹⁶³

In comparison, the worker in *Bralley v. Daugherty*¹⁶⁴ was injured while traveling on a private road that was owned and maintained by the developer of the industrial park where the employer did business. Admittedly, the employer in *Barber* had maintained the public street on which the accident occurred,¹⁶⁵ whereas the employer in *Bralley* did nothing to the street on which Bralley was injured.¹⁶⁶ However, the inquiry into whether the employer controlled the location of the accident should extend beyond an examination of the physical contacts or ownership of the site,¹⁶⁷ to an examination of the employer's power to control the risk. Certainly the employer in *Bralley* had more power to eliminate or reduce the risk presented by the railroad siding on the developer's private road than Pillsbury had to reduce the risk of turning left into the employer's premises from the public highway. Bralley's employer conducted business with the developer and could have persuaded it to install warning devices at the railroad crossing. It would have been much more difficult for Pillsbury

158. J. Young, *supra* note 7, § 5.6.

159. 117 Ohio St. 373, 159 N.E. 363 (1927).

160. *Id.* at 374-75, 159 N.E. at 363.

161. For an illustration of a strict application of the control test, see *Becton, Dickinson & Co. v. Industrial Comm'n*, 54 Ohio App. 2d 186, 376 N.E.2d 961 (Ct. App. 1977), impliedly overruled by *Baughman v. Eaton Corp.*, 62 Ohio St. 2d 62, 402 N.E.2d 1201 (1980).

162. *Industrial Comm'n v. Barber*, 117 Ohio St. 373, 374-75, 159 N.E. 363, 363 (1927).

163. *Id.*

164. 61 Ohio St. 2d 302, 302, 401 N.E.2d 448, 449 (1980).

165. *Industrial Comm'n v. Barber*, 117 Ohio St. 373, 159 N.E. 363 (1927).

166. *Bralley v. Daugherty*, 61 Ohio St. 2d 302, 302, 401 N.E.2d 448, 449 (1980).

167. The court in *Bralley* restricted its inquiry to physical contacts with the road, including responsibility for "maintenance, construction, repair, patrol, marking, or inspection," acknowledging that the employer exercises some element of control over the road through a non-exclusive easement. *Bralley v. Daugherty*, 61 Ohio St. 2d 302, 302, 401 N.E.2d 448, 449 (1980). In contrast, the court of appeals in *Friskhorn v. Flowers*, 26 Ohio App. 2d 165, 270 N.E.2d 366 (Ct. App. 1971) took an expansive view of employer control in awarding compensation to an employee injured in a shopping center parking lot. The employer had rental rights and privileges to use the parking lot. The court found this was enough to constitute control.

to persuade the state to build a separate left turn lane and install a left turn light in front of its plant.

In *Industrial Commission v. Henry*,¹⁶⁸ the employer had no direct control over the area in front of the plant entrance in which the railroad crossing and the public street intersected, but the employer did have the power to relocate the entrance to a less hazardous place.¹⁶⁹ In *Littlefield*, Pillsbury also could have moved its plant entrance to a less hazardous intersection. Although at first glance, this degree of control may appear attenuated, local governments, eager to cultivate business development in today's economy, can accommodate the special needs and concerns of employers.

Accidents arising from hazards at or near plant entrances are the clearest cases in which a court can find employer control over the accident. If the employer locates an entrance at a dangerous intersection, the employer can be held accountable for employee accidents which occur when the employee enters or leaves the premises, even accidents that occur off the employer's premises. An examination of the employer's control over the location of the accident is justified when the employer has an economic incentive to reduce or minimize the risk associated with the location of the accident site; this incentive is direct for a self-insured employer, who will potentially pay higher awards, and indirect for employers who contribute to the state fund, because the employer's premium may increase.¹⁷⁰ Employer control should be examined more expansively. Courts should look beyond ownership of the property on which the accident occurred and ascertain the employer's ability to control the risk. This entails an examination into what the employer could do or could have done to eliminate the risk, not what the employer has done in the past.

3. Instrumentality or Person Physically Affecting the Accident

If a person or instrumentality related to the injured employee's employment physically affected an accident, compensation may be awarded; this factor is derived from the "arising out of the employment" requirement for compensation.¹⁷¹ While usually not at issue in going and coming rule cases, this factor provides some insight into a work connection inquiry. The *Littlefield* majority entirely overlooked the grain truck that struck the car in which Littlefield was riding. Because Pillsbury uses grain in its flour business, the truck could have been approaching the plant to make a

168. 124 Ohio St. 616, 180 N.E. 194 (1932).

169. *Id.*

170. This same analysis applies to *General Ins. Co. v. Workers' Comp. Appeals Bd.*, 16 Cal. 3d 595, 546 P.2d 1361, 128 Cal. Rptr. 417 (1976), because the employer in *General Insurance* could have eliminated the risk encountered when parking alongside the street by providing a parking lot for its employees. *Id.* at 598, 546 P.2d at 1362, 128 Cal. Rptr. at 418. In considering the frequency of exposure to a common risk and the degree of control exerted by the employer over the accident scene, *General Insurance* is quite similar to *Littlefield* and *Parks v. Workers' Comp. Appeals Bd.*, 33 Cal. 3d 585, 660 P.2d 382, 190 Cal. Rptr. 158 (1983); nevertheless, the California Supreme Court refused to find the injury work-related. *General Ins. Co. v. Workers' Comp. Appeals Bd.*, 16 Cal. 3d 595, 601, 546 P.2d 1361, 1364, 128 Cal. Rptr. 417, 420 (1976). For a criticism of *General Insurance*, see Prendergast, *Going and Coming Rule Literally Applied—Special Risk and Special Mission Exceptions Narrowly Construed*, 17 SANTA CLARA L. REV. 726 (1977).

171. OHIO REV. CODE ANN. § 4123.01(C) (Page Supp. 1983); 1A A. LARSON, *supra* note 2, § 29.10; Malone, *supra* note 31; see *supra* text accompanying notes 18–31.

delivery when the accident occurred. Thus, the volume of traffic around the plant in part was attributable to Pillsbury's business activity.¹⁷²

In *Parks v. Workers' Compensation Appeals Board*,¹⁷³ traffic had stopped to allow children leaving the school to cross the street; Parks and other departing teachers who were waiting in their parked cars were thereby susceptible to assault.¹⁷⁴ The school could have syncopeated the release of the schoolchildren to avoid traffic tie-ups on the public street or policed the street crossing to minimize the chance that teachers could be robbed while traffic was stopped. Sitting in a stopped car was a special risk that Parks frequently encountered; consequently, a work connection existed.¹⁷⁵

*Nelson v. City of St. Paul*¹⁷⁶ is analogous to *Parks*. In *Nelson*, a teacher, while walking along a public sidewalk, was struck by a ball that had been hit by a student.¹⁷⁷ Compensation was awarded to the teacher; the source of the injury, the student-hit ball, came from the employment premises, the schoolgrounds.¹⁷⁸ Even though the risk extended off the premises and any pedestrian was subject to it, a teacher incurs a greater risk than other people because a teacher repeatedly faces this common risk.¹⁷⁹ Because the injury directly resulted from an act committed by a person connected with the teacher's employment, the *Nelson* court easily reasoned that the teacher could collect compensation.

In *Marlow v. Goodyear Tire and Rubber Co.*,¹⁸⁰ an employee was injured in an automobile accident that occurred in the employer's parking lot.¹⁸¹ The court awarded compensation and based its decision on the zone of employment theory.¹⁸² In *Marlow*, however, the argument that the injury was work-related is even stronger because the plaintiff-employee's car was struck by another employee's car rather than by a nonemployee's car.¹⁸³

In *Oliver v. Wyandotte Industries Corp.*,¹⁸⁴ a case cited by the *Littlefield* majority opinion, an employee who was leaving the employer's private road and turning onto a public highway was struck by a passing car. The court held that the employee's injuries were compensable; a snowbank created by the employer had obstructed her vision.¹⁸⁵ The snowbank which was created by the employer was the

172. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 389-90, 453 N.E.2d 570, 571-72 (1983). Some scholars suggest weighing elements of both "in the course of" and "arising out of" to arrive at a determination of work-relatedness. The truck which struck the car in which *Littlefield* was riding was not actually traveling to the Pillsbury plant. However, Pillsbury's plant and several other grain-related businesses are located in the same vicinity. Traffic problems on the highway are related to this business activity. Telephone interview with David Levine of Clark & Eyrich Co. (Mar. 1985).

173. 33 Cal. 3d 585, 660 P.2d 382, 190 Cal. Rptr. 158 (1983).

174. *Id.* at 587, 660 P.2d at 383, 190 Cal. Rptr. at 159.

175. *Id.*

176. 249 Minn. 53, 81 N.W.2d 272 (1957).

177. *Id.* at 55, 81 N.W.2d at 275.

178. *Id.* at 57-59, 81 N.W.2d at 276-77.

179. *Id.* at 58, 81 N.W.2d at 277. *Contra*, *Quarant v. Industrial Comm'n*, 38 Ill. 2d 490, 231 N.E.2d 397 (1967).

180. 10 Ohio St. 2d 18, 225 N.E.2d 241 (1967).

181. *Id.* at 18-19, 225 N.E.2d at 242.

182. See *supra* text accompanying notes 118-21.

183. *Marlow v. Goodyear Tire and Rubber Co.*, 10 Ohio St. 2d 18, 18-19, 225 N.E.2d 241, 242 (1967).

184. 308 A.2d 860 (Me. 1973).

185. *Id.*

employment hazard, and it extended beyond the employer's boundary line.

The physical cause of an accident, however, may not be related to the employment; this weighs against work connection. In *General Insurance Co. v. Workers' Compensation Appeals Board*,¹⁸⁶ by comparison, the employee was killed by a passing car while parking his own vehicle on the street in front of his employer's premises.¹⁸⁷ The employer in *General Insurance* did not control the traffic on the street, and there was no indication that the traffic was related to the employer's business.¹⁸⁸ In *Littlefield*, the court did not consider the employer's control over the instrumentality that caused the accident (the grain truck). It seems evident, however, that the existence of an employment-related person or instrumentality that affects the accident is an important factor and should weigh heavily in finding that the resulting injury is work-connected and in awarding compensation.¹⁸⁹

4. *The Benefit to the Employer of the Employee's Activity at the Time of the Accident*

The going and coming rule should not preclude recovery in all off-premises lunch break cases. The benefit the employer receives from the employee's activity at the time of the accident should be examined to determine whether the employee should be awarded compensation. In *Littlefield*, the employee had worked through a paid fifteen minute break. He added this time to his unpaid thirty minute lunch break.¹⁹⁰ The *Littlefield* court argued that Littlefield's lunch break and forty-five minute sojourn contributed to his productivity; Littlefield only exited the plant premises because of his extended lunch time and only had extra time because he had worked through his paid break. Thus, the employer received a benefit from Littlefield's lengthened lunch;¹⁹¹ hence the lunch break was work-related.¹⁹²

The *Littlefield* court analogized the facts of the case before it to those in *Industrial Commission v. Henry*.¹⁹³ Henry had only been at work a short time before he left to eat breakfast. In contrast, Littlefield had worked several hours before taking his break. The court thus reasoned that Littlefield's break contributed more to his productivity than Henry's break contributed to Henry's effectiveness.¹⁹⁴ The productivity argument, however, suffers serious flaws. The New Jersey Supreme Court, in *Hornyak v. Great Atlantic & Pacific Tea Co.*,¹⁹⁵ distinguished between lunchtime trips and homeward trips. The *Hornyak* court believed that the employee's obligation to return to work and the benefit to the employer from the employee taking a lunch break justified a finding of work-connection for off-premises lunch break injuries.¹⁹⁶

186. 16 Cal. 3d 595, 546 P.2d 1361, 128 Cal. Rptr. 417 (1976).

187. *Id.* at 598, 546 P.2d at 1362, 128 Cal. Rptr. at 418.

188. *Id.*; see also *Bralley v. Daugherty*, 61 Ohio St. 2d 302, 401 N.E.2d 448 (1980).

189. See, e.g., *Industrial Comm'n v. Weigandt*, 102 Ohio St. 1, 130 N.E. 38 (1921).

190. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 389, 453 N.E. 2d 570, 571-72 (1983).

191. *Id.* at 394-95, 453 N.E.2d 575-76.

192. *Id.*

193. 124 Ohio St. 616, 180 N.E. 194 (1932).

194. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 394-95, 453 N.E.2d 570, 575-76 (1983).

195. 63 N.J. 99, 305 A.2d 65 (1973).

196. *Id.* at 107-08, 305 A.2d at 69-70.

In his text on workers' compensation, Professor Larson criticizes the *Hornyak* decision, stating that the employee is no more obligated to return to work from lunch than he is to report to work at the start of each workday.¹⁹⁷ Additionally, Professor Larson argues that the employer receives no more productivity benefits from a worker who goes to lunch than from a worker who goes home each night: "An employee could conceivably finish his workday without lunch, but he would be an inefficient employee, indeed, if he missed his dinner, his night's sleep, and his breakfast."¹⁹⁸

Justice Locher criticized the *Littlefield* majority's productivity argument and argued that the break in *Henry* increased the employee's productivity more than the break in *Littlefield* increased Littlefield's productivity.¹⁹⁹ Both the majority opinion and the dissenting opinion miss the point. The productivity argument is irrelevant in distinguishing lunch travel from going and coming home. The employer receives no greater productivity benefits from the employee who travels to lunch than from the employee who travels to and from work each day.

In *County of Los Angeles v. Workers' Compensation Appeals Board*,²⁰⁰ a case decided subsequent to *Parks v. Workers' Compensation Appeals Board*,²⁰¹ a California court of appeals denied compensation to an employee who had been injured during her lunch hour. A car crashed into the food stand where she was eating, causing her to suffer multiple injuries.²⁰² Her one hour lunch break was, like Littlefield's, comprised of paid breaks, of fifteen minutes each, and an unpaid thirty minute lunch break. The court refused to consider any part of the lunch period as paid time,²⁰³ and thus foreclosed the conclusion that the lunch period was necessary for the employee's comfort and convenience:²⁰⁴ "We do not believe the requirement that an injury occur in the 'course of employment' is met where the employer's only connection to the injury is to allow an employee to rearrange her work time and off-duty time for the employee's convenience or benefit."²⁰⁵ Thus, the partially paid lunch break would not justify application of the special risk exception. Because Ohio has adopted the California special risk exception and because California plays a leading role in developing the law of workers' compensation, Ohio should adopt the rule espoused by the court in *County of Los Angeles v. Workers' Compensation Appeals Board*.

197. 1 A. LARSON, *supra* note 2, § 15.12.

198. *Id.*

199. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 402-03, 453 N.E.2d 570, 581-82 (1983) (Locher, J., dissenting).

200. 145 Cal. App. 3d 418, 193 Cal. Rptr. 374 (Ct. App. 1983).

201. 33 Cal. 3d 585, 660 P.2d 382, 190 Cal. Rptr. 158 (1983).

202. *County of Los Angeles v. Workers' Comp. Appeals Bd.*, 145 Cal. App. 3d 418, 420, 193 Cal. Rptr. 374, 375 (Ct. App. 1983).

203. *Id.* at 422-23, 193 Cal. Rptr. at 376. *But see* *Duncan v. Workers' Comp. Appeals Bd.*, 150 Cal. App. 3d 117, 197 Cal. Rptr. 474 (Ct. App. 1983) (compensation of salaried employee apportioned over the workday, including her lunch period, because of the employer's acquiescence in her practice of working through three daily break periods).

204. 2 W. HANNA, *supra* note 17, § 9.03[2][a].

205. *County of Los Angeles v. Workers' Comp. Appeals Bd.*, 145 Cal. App. 3d 418, 423, 193 Cal. Rptr. 374, 376 (Ct. App. 1983).

C. The Direction of the Special Risk Exception

All four of the previously discussed factual categories: the proximity of the accident to the employer's premises, the employer's control over the location of the accident, the instrumentality or person from the employment affecting the accident, and the benefit to the employer of the employee's activity at the time of the accident, are interrelated and must be balanced to determine whether the special risk exception applies to a set of facts. While one circumstance may militate against a finding of work connection, another may favor it.²⁰⁶ All the facts and circumstances must be carefully weighed before the special risk exception to the going and coming rule can be applied. If after considering all the factors in the case a court concludes that the injury was work-related, workers' compensation should be awarded to the injured employee.

V. STATUTORY AND POLICY CONSIDERATIONS

The *Littlefield* majority noticeably failed to discuss relevant statutes and public policies which support its position. The policies which underlie the workers' compensation system are crucial to the outcome of most cases. An examination of the Ohio General Assembly's goals to be accomplished by workers' compensation is thus necessary.²⁰⁷

Workers' compensation seeks to provide benefits to victims of work-related injuries without reference to fault and seeks to allocate the cost of the award system to the consumer. In this manner, the "cost of the product . . . bear[s] the blood of the workman."²⁰⁸ By passing the cost of the injury, or rather the cost of insuring against injuries, to the consumer, the product's true cost is reflected in its price. To reduce costs and thereby remain competitive, an employer will try to reduce insurance premium increases or, in the case of a self-insurer, to reduce the number of compensation claims. In order to reduce these burdensome sums, an employer will try to eliminate, to the extent such efforts are cost-efficient,²⁰⁹ the employment hazards that directly or indirectly result in increased premiums and claims. If the connection between the employment and the injury is so tenuous that the employer cannot affect or change the causal factor, the policy of including the cost of injuries in the cost of the product is undercut. In addition, the consumer should not pay for compensating injuries that are not connected to work and thus not a cost of producing the product. Hence, requiring an injury to be work-related serves a very real purpose in effectuating the goals of the workers' compensation system.

206. For example, a worker may be injured in an automobile accident fifty feet farther from his employer's premises than *Littlefield* was, but he may have been hit by one of his employer's trucks driving through the intersection of a public and private street. In this case, the latter circumstance counterbalances the longer distance from the premises and the requisite work connection may exist.

207. The Ohio General Assembly is considering a bill that would effectively reverse the *Littlefield* result. See H.B. No. 423, 116th Gen. Assembly, Regular Sess. (1985-86).

208. W. PROSSER & W. KEETON, *supra* note 3, § 80, at 573.

209. An employer may receive points or penalties, depending on whether his record of accidents for particular job classifications is above or below the actuarial average for the industry. These points or penalties serve to reduce or increase an employer's premiums. Thus, an employer has a direct and tangible incentive to eliminate risks he controls.

If the employer's connection and control over preventing an injury is so remote that it cannot alter the situation, the injured worker should bear the cost of the injury. Historically, courts believed this was harsh, because an individual employee rarely insured himself or his family from the debilitating cost of accidents. In transportation cases today, by contrast, nearly all drivers carry some form of automobile insurance which protects them and others against calamitous medical costs. Indeed, since 1984, Ohio law requires all licensed Ohio drivers to purchase motor vehicle operation insurance coverage or to be financially responsible.²¹⁰ Perhaps this consideration will pacify those who believe that workers' compensation is harsh to employees whose injuries are not deemed to be work-related.

The Ohio General Assembly has provided that the workers' compensation laws should be liberally construed in favor of workers.²¹¹ The *Littlefield* majority relied on this provision to justify its conclusions.²¹² The court stated, "We are mindful that [the Workers' Compensation Act must] be liberally construed in favor of employees."²¹³ This section is merely a legislative restatement of a judicial rule that originated with the advent of compensation law.²¹⁴ Courts, therefore, must not read the liberal construction statute as an added legislative mandate but only as an agreement by the legislature with the current judicial path. "Liberal construction has its limitations. . . . The real import of the liberal construction rule is that the employee is to receive the prime benefit when an element of discretion is present in an administrative or judicial determination."²¹⁵ The limits of the rule have long been recognized by courts: "The Workmens' Compensation Law is construed liberally and with a view to accomplishing the purpose of its enactment, but an award is not authorized unless there be some evidence to support the claim of liability."²¹⁶

Another Ohio statute, passed in 1982 and not discussed by either the majority or dissent, excludes compensation for injuries resulting from "participating in a ridesharing arrangement between [an employee's] place of residence and place of employment or termini near such places."²¹⁷ A ridesharing arrangement is defined as "the transportation of persons in a motor vehicle where such transportation is incidental to another purpose of a volunteer driver"²¹⁸ While it appears that the statute was intended to encourage car pooling the statute may indicate the legislature's general attitude toward compensating off-premises injuries. If the general assembly sought to preclude compensation for injuries resulting from an accident in an employer-organized carpool, how much more attenuated to the employment is an automobile accident occurring on the way to work by an employee driving himself?

210. OHIO REV. CODE ANN. § 4509.101 (Baldwin 1983). *Littlefield* recovered a \$5,025,000 judgment in a separate action against the employer of the driver who hit the car in which he was a passenger. However, *Littlefield* settled for less when the employer filed bankruptcy. Telephone Interview with David Levine (Mar. 1985).

211. OHIO REV. CODE ANN. § 4123.95 (Page 1980).

212. *Littlefield v. Pillsbury Co.*, 6 Ohio St. 3d 389, 395, 453 N.E.2d 570, 576 (1983).

213. *Id.*

214. J. YOUNG, *supra* note 7, § 4.9.

215. *Id.*

216. *Industrial Comm'n v. Lewis*, 125 Ohio St. 296, 300, 181 N.E. 136, 137-38 (1932).

217. OHIO REV. CODE ANN. § 4123.452 (Page Supp. 1983).

218. *Id.*

The legislature intended that automobile accidents involving employer-arranged carpools are not work-connected accidents. A non-carpool automobile accident that occurs on the way to work is even further removed from work connection, since the employee's transportation in this case is even less related to his work.

VI. CONCLUSION

The *Littlefield* court limited its holding to the facts of the case. Courts and review boards should not view *Littlefield* as a license to grant compensation in all off-premises accidents; it is only authority to grant compensation in cases when the facts and circumstances warrant a finding of work-connection.²¹⁹ Thus limited, *Littlefield* effects a just result when an employment hazard, not simply a hazard associated with the common risk of traveling to and from work, causes an off-premises injury.

Merely reformulating the language of the special risk exception will not solve the problem, for the failure of this test to address important factors, such as proximity of the accident to the employer's premises, leaves no logical end to its satisfaction. If the risk of the left turn *Littlefield* made was increased because of his increased frequency of exposure to it, the same holds true for every left turn made by him on his regular route to work each day. To comply with the Ohio Constitution and statutory law,²²⁰ there must be limits on the application of the special risk exception. Indeed, the inconsistency of application of the exception to California cases²²¹ forewarns that a literalist approach is not desired.

Instead, when confronted with a going to and from work case like *Littlefield*, courts should examine all the facts and circumstances bearing on the basic issues of causal connection and work connection. Particular weight should be given to the proximity of the accident to the employer's premises. By weighing these factors in an individual case as they compare with previous cases, a result can be achieved that is neither unduly harsh from an injured employee's viewpoint nor unduly expansive from an employer's viewpoint.

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219. See *Huffman v. Bureau of Workers' Comp.*, Case No. CA-6220 (Stark County Ct. App. Nov. 28, 1983), where the court reversed summary judgment and remanded the case based on *Littlefield* with no discussion of the facts of the case.

220. See *supra* note 18.

221. Compare *General Ins. Co. v. Workers' Comp. Appeals Bd.*, 16 Cal. 3d 595, 546 P.2d 1361, 128 Cal. Rptr. 417 (1976) with *Parks v. Workers' Comp. Appeals Bd.*, 33 Cal. 3d 585, 660 P.2d 382, 190 Cal. Rptr. 158 (1983).